

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION

Petitioner,

v.

JOEL W RUTHERFORD and
THE RUTHERFORD GROUP LLC

Respondents.

No. 17-1266 RE

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about June 19, 2018, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Joel W. Rutherford and The Rutherford Group LLC*, No. 16-2484 RE. In that Decision, the Administrative Hearing Commission found that Respondent Joel W. Rutherford's real estate broker associate licenses (license nos. 2001009430 and 2018011307) and The Rutherford Group LLC license (license no. 2012029612) are subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2 (1), (2), (3), (15), and (16), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on October 10, 2018, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

against Respondent's license. All of the members of the Commission were present throughout the meeting except Charles Misko. Further, each member of this Commission has read the Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Ross Keeling. Respondents having received proper notice and opportunity to appear, Respondent Joel W. Rutherford did appear in person without legal counsel. Respondent The Rutherford Group LLC was not represented by legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Decision, and the record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Joel W. Rutherford and The Rutherford Group LLC*, Case No. 17-1266 RE, issued June 19, 2018, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents in a proper and timely fashion. Respondent Joel W. Rutherford did appear in person without legal counsel and Respondent The Rutherford Group LLC was not represented by legal counsel at the hearing before the Commission.

4. This Commission licensed Respondent Joel W. Rutherford as a real estate broker associate, license numbers 2001009430 and 2018011307 and The Rutherford Group LLC, real estate association, license number 2012029612. Respondents' licenses were not current at all times relevant to this proceeding. On June 30, 2016 Respondents' real estate licenses expired.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the Decision issued by the Administrative Hearing Commission dated June 19, 2018, in *Missouri Real Estate Commission v. Joel W. Rutherford and The Rutherford Group LLC*, Case No. 17-1266 RE, takes official notice thereof, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated June 19, 2018, Respondent's real estate broker associate license, numbers 2001009430 and 2018011307, and real estate association license number 2012029612 are subject to disciplinary action by the Commission pursuant to § 339.100.2 (1), (2), (3), (15), and (16), RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate broker associate licenses of Joel W. Rutherford (license nos. 2001009430 and

2018011307) and the real estate association license of The Rutherford Group LLC (license no 2012029612) are hereby placed on **FOUR (4) YEARS' PROBATION**. During Respondents' probation, Respondents shall be entitled to practice under their respective licenses provided that Respondents adheres to all of the terms stated herein. The period of probation shall constitute the "disciplinary period."

The terms and conditions of the disciplinary period are as follows:

A. Respondents shall, at their expense retain an approved CPA/Accountant to conduct and complete the quarterly audit reports for **TWO (2) YEARS** of the disciplinary period. Respondents shall, within fifteen (15) calendar days of the effective date of this Order submit to the Commission office in writing a list of at least three CPAs/Accountants, including name, address, and relationship to Respondents. The Commission may approve one or more the listed CPAs/Accountants or may require Respondents, on grounds that are reasonable, to submit additional names for consideration and approval. The first such quarterly audit report shall begin with the quarter ending December 31, 2018 and continue through and conclude with the quarter ending December 31, 2020. Further, within 30 days of completion of each quarterly audit report, the CPA/Accountant conducting and completing the audit report will mail to the Commission office by certified mail, return receipt requested, a signed statement from the CPA/Accountant confirming that his/her firm completed a reconciliation of the accounts and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to provide the reconciliation should be submitted with the CPA's/Accountant's statement. If the CPA/Accountant should find that the three-way reconciliation does not match, the CPA/Accountant report should include the details and documentation.

B. Respondents are hereby ordered to renew broker associate license number 2001009430 and real estate association license number 2012029612 with 45 days of the date of this order. Thereafter, Respondents shall timely renew their real estate licenses, timely pay all fees required for license renewal, and shall comply with all requirements necessary to maintain their licenses. Respondents cannot apply for additional real estate licenses or change current licenses without the written approval of the Commission.

C. Respondents shall keep the MREC apprised at all times, in writing, of any criminal court case outcomes and any civil court case outcomes related to real estate matters or that could affect the status of Respondents real estate licenses.

D. Respondents shall keep the MREC apprised at all times, in writing, of Respondents' current addresses and telephone numbers at each place of residence and business. Respondents shall notify the MREC within ten (10) days of any change in this information.

D. Respondents shall meet in person with the Commission or its representative any such time or place as required by the Commission or its designee upon notification from the Commission or its designee. Said meetings will be at the Commission's discretion and may occur periodically during the probation period.

E. Respondents shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested by the Commission or its designee.

F. During the probationary period, Respondents shall accept and comply with unannounced visits from the Commission's representative to monitor compliance with the terms and conditions of this Order.

G. Respondents shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations duly promulgated under all local, state and federal laws.


"State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Respondents' licenses as a broker associate and real estate association under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall constitute a violation of this Order.

H. Upon the expiration and successful completion of the disciplinary period, Respondents' respective real estate broker associate and real estate association licenses shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondents have violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondents' real estate broker associate or real estate association licenses.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 24th DAY OF OCTOBER, 2018.

MISSOURI REAL ESTATE COMMISSION


Terry W. Moore, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



REAL ESTATE COMMISSION,

Petitioner,

v.

JOEL W. RUTHERFORD AND THE
RUTHERFORD GROUP, LLC,

Respondents.

No. 17-1266

DECISION

Cause exists to discipline the real estate licenses of Joel W. Rutherford and Rutherford Group, LLC (RG).¹

Procedure

On August 3, 2017, the Missouri Real Estate Commission (MREC) filed a complaint alleging there is cause to discipline Rutherford and Rutherford Group, LLC (RG). Rutherford and RG were served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on October 13, 2017. On November 15, 2017, Rutherford filed a motion for extension of time to file an answer. On November 16, 2017, we granted Rutherford's motion, and gave him until December 13, 2017 to file an answer. On January 24,

¹ On February 1, 2018, we issued an order granting the MREC's motion for default decision against RG.

2018, Rutherford filed an answer.² No attorney entered an appearance on behalf of RG; thus, it did not file an answer to the complaint. On February 1, 2018, we held a hearing. Assistant Attorney General Ross Keeling represented MREC. Neither Rutherford nor any representative of him or RG appeared. At the hearing, we granted MREC's motion for default decision against RG and entered a decision granting MREC the relief requested in its complaint against RG. The matter became ready for our decision on March 20, 2018, the date the last written arguments were due.³

Findings of Fact

1. At all relevant times, Rutherford held a Missouri real estate broker associate license issued by MREC. The original date of issue was August 22, 2012.
2. RG is a Missouri limited liability company whose registered agent and designated broker is Rutherford, with an address of 254 Renaldo Drive, Chesterfield, Missouri. At all relevant times, RG held a real estate association license from MREC that was originally issued August 22, 2012.
3. On November 5, 2015, Rutherford and RG were randomly selected for an audit.

² Rutherford failed to timely answer MREC's complaint and did not appear at the hearing. However, MREC did not file a motion for default decision, or a motion for sanctions under 1 CSR 15-3.425(1). Therefore, we decline to impose sanctions on our own motion, and accept Rutherford's answer. MREC's exhibits were admitted into evidence at the hearing, and shall constitute the sole evidentiary basis for disposition of this case. 1 CSR 15-3.490(6)B. All references to "CSR" are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update, unless otherwise noted.

Furthermore, Exhibits 1 and 5 contain written statements from Rutherford and Brenda Weston, both of whom did not appear and testify at the hearing. All of this is hearsay. Although these exhibits were admitted as evidence at the hearing, this does not change their hearsay status. However, Rutherford did not object to their admission. Where no objection is made, hearsay evidence in the records can and must be considered in administrative hearings. *Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App., S.D. 2004) (citing *Dorman v. State Bd. of Regis'n for the Healing Arts*, 62 S.W.3d 446 (Mo. App. W.D. 2001)). The question is not whether the evidence is admissible, but what weight we give it.

³ Rutherford filed two written arguments after the date of the hearing.

4. MREC conducted an audit of Rutherford and RG for the period of January 2015 to January 2016 (Audit Period).

5. Rutherford maintained a real estate property management escrow account at Fortune Bank (Fortune account), and a personal business account at Triad Bank (Triad account).

6. The properties that Rutherford managed during the audit period include: Optimus Management Group, LLC ("Optimus"), ANM Properties LLC (ANM), JKS Investment Properties, LLC (JKS), Anchor Realty Group, LLC (ARG), CNR Properties, LLC (CNR), TLB Investment Properties, LLC (TLB) Residential Leasing Options, LLC (RLO), 527 Group, LLC (527), Peanut Acquisitions, LLC (Peanut), 6211 Robert Ave., LLC (6211),⁴ Joshua Martin (JM), KTL Enterprises LLC (KTL), and Front Porch Investments, LLC (FPI).

Counts I and VI

7. Rutherford failed to provide an explanation for the following amounts that were paid from the Fortune account on the following dates:

- January 21, 2015: \$102,412.73
- March 15, 2015: \$1,621.47
- July 13, 2015: \$502.03
- November 13, 2015: \$8,350⁵

8. Harrison Bohn was a real estate investor, as well as a part owner and managing member of three companies: DVM Holdings, LLC, Schprocket VF, LLC and JVM Holdings, LLC (hereinafter "DVM," "VF," and "JVM," respectively).

⁴ On December 31, 2015, 6211 was sold to Peanut. Ex. 1 at 437.

⁵ MREC's Ex. 1 contains a letter from Rutherford to MREC dated February 16, 2016, in which he states that the \$8,350 was "a wire transfer to Title Partner's Agency for seller costs associated with the sale of properties from Optimus Management Group ("Optimus") to Peanut Acqu[isitions] LLC." Ex. 1 at 30. (Emphasis added). However, there is no other admissible evidence in the record to indicate that these funds were accounted for by Rutherford.

9. Between 2012 and 2015, Rutherford managed properties that Bohn owned through DVM, VF and JVM.

8. On August 18, 2015, Bohn e-mailed Rutherford and requested that he remit all money that Rutherford owed Bohn and DVM, VF, and JVM.

9. On September 9, 2015, Bohn sent Rutherford another e-mail requesting that he remit a total of \$188,910.39, which included: a) \$59,252.18 for funds owed to DVM, VF, and JVM due by November 15, 2015; and b) the remaining balance of \$129,658.21 due to JVM in \$10,000 monthly installments beginning on December 15, 2015.⁶

10. On September 25, 2015, MREC received three complaints from Bohn on behalf of DVM, JVM, and VM against Rutherford and RG. The complaint alleged that Rutherford and RG owed a total of \$188,910.39 to the three companies, broken down by \$2,975.03 to DVM, \$178,513.21 to JVM, and \$7,422.15 to VF.

11. Bohn's complaints also included several unsigned checks written on the Fortune escrow account and made payable to JVM, DVM, and VF.

12. As of September 25, 2015, Rutherford has not remitted any of the funds to DVM, VF, and JVM that Bohn requested in his August 18, 2015 e-mail to Rutherford.

Count II

13. On January 21, 2015, \$124,000 was deposited into the Optimus account, and \$102,412.73 was paid from the same account.

14. On February 9, 2016, MREC sent Rutherford a letter that requested records and, among other things, an explanation of the two transactions to and from the Optimus account.

⁶ Exhibits 2-5. There was one unsigned check for \$2,975.03 on Ex. 1, p. 968, that was not attached to Ex. 4. That check brings the total amount requested in Bohn's e-mail to \$188,910.39.

15. In Rutherford's February 16, 2016 letter to MREC, he asserted that the \$124,000 deposit came from the "loan proceeds from an investor," and that "[t]he funds were used to bring loan payments & property taxes current that had fallen behind due to unfulfilled loan commitments to the portfolio by Fortune Bank."⁷ In regards to the \$102,412.73 debit, Rutherford asserted in the letter that "The funds were *debited from the escrow account* and distributed among various Fortune Bank loans secured by properties under management."⁸ (Italics added).

16. As of the date of the hearing in this case, Rutherford has not provided the MREC with any records MREC requested in its February 9, 2016 letter to Rutherford.

Count III

17. Rutherford's Fortune account bank statement for the period of January 1, 2015 to February 1, 2015 shows that ten checks were returned for insufficient funds.

18. Rutherford's Fortune account bank statement for the period of February 2, 2015 to March 1, 2015 shows that five checks were returned for insufficient funds.

19. Rutherford's Fortune account bank statement for the period of March 2, 2015 to March 31, 2015 shows that two checks were returned for insufficient funds.

20. Rutherford's Fortune account bank statement for the period of April 1, 2015 to April 30, 2015 shows that two checks were returned for insufficient funds.

21. Rutherford's Fortune account bank statement for the period of May 1, 2015 to May 31, 2015 shows that five checks were returned for insufficient funds.⁹

⁷ Ex. 1 at 30.

⁸ *Id.*

⁹ Ex. 1 at 507, 511, 516-17. During the account periods of May 1, 2015 to May 31, 2015; June 1, 2015 to June 30, 2015; and July 1, 2015 to August 2, 2015, some of the returned checks were labeled on the account statements as "*return item credit*," while others were labeled as "*returned item credit*." (Italics added).

22. Rutherford's Fortune account bank statement for the period of June 1, 2015 to June 30, 2015 shows that 90 checks were returned for insufficient funds.

23. Rutherford's Fortune account bank statement for the period of July 1, 2015 through August 2, 2015 shows that 83 checks were returned for insufficient funds.

Count IV¹⁰

24. Between September 11, 2015 and September 25, 2015, Rutherford issued six checks from the Triad account for expenses at properties that he managed.

25. During July 2015, Rutherford used the Triad account to pay for expenses for properties that Rutherford managed.

26. In December 2015, Rutherford issued checks with reference numbers of 2688, 2659, 2651, 2650, 2638, and 2643 from the Triad account for expenses at properties that he managed.

Count V

25. In September 2015, the account statements for KTL and FPI had final monthly balances that were negative.

26. In December 2015, the account statements for ANM, JKS, ARG, CNR, TLB, RLO, 527, Peanut, 6211, and JM had final monthly balances that were negative.

Conclusions of Law

We have jurisdiction to hear this case.¹¹ MREC has the burden of proving that there is cause for discipline.¹²

¹⁰ In its complaint, MREC alleges cause for discipline under § 339.100.2(15) for violating § 339.105.1 and 20 CSR 2250-8.220(3). However, MREC's written argument asserts only a violation of § 339.105.1 as a cause for discipline under § 339.100.2(15). We consider MREC's argument asserting a violation of 20 CSR 2250-8.220(3) to be abandoned. Statutory references, unless otherwise noted, are to RSMo. 2016.

¹¹ Section 621.045.

¹² *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

Section 339.040.1(3)¹³ permits the issuance of licenses to persons who:

Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Section 339.100 states:

2. The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:
 - (1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all money belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;
 - (2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;
 - (3) Failing within a reasonable time to account for or to remit any money, valuable documents or other property coming into his or her possession, which belongs to others;
- ***
- (15) Violation of or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860; or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

¹³ In its complaint, MREC alleges cause for discipline under §339.100.2(16) for committing acts that would be grounds for MREC to refuse Rutherford a license under § 339.040.1(1)-(3). However, MREC's written argument lists only "competence" under § 339.040.1(3). We consider the allegations under subsections (1) and (2) of § 339.040.1 to be abandoned.

- (16) Committing any act which would otherwise be grounds for the commission to refuse a license under section 339.040;

- (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Section 339.105 states:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

Section 339.710(12) defines "designated broker" as:

any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability company, professional corporation or corporation. Every real estate broker partnership, limited partnership, association, limited liability company,

professional corporation or corporation shall appoint a designated broker[.]

Regulation 20 CSR 2250-8.120 provides, in relevant part:

- (1) All money received by a licensee as set out in section 339.100.2(1), RSMo shall be deposited in the escrow or trust account maintained by the broker no later than ten (10) banking days following the last date on which the signatures or initials, or both, of all the parties to the contract are obtained, unless otherwise provided in the contract. Earnest money received prior to acceptance of a written contract may be deposited into the escrow account by the broker with the written authorization of the party(ies) providing the funds.

- (4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed.

- (6) Each check written on an escrow account or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related real estate transaction(s). Each check written on an escrow account for commission shall be made payable to the licensee to whom the commission is owed or to the firm's general operating account.
- (7) The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

Regulation 20 CSR 2250-8.220 states:¹⁴

- (1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

Counts I and VI¹⁵

The evidence establishes that Rutherford failed to provide an explanation for the following amounts that were paid from the Fortune account on the following dates: January 21, 2015 (\$102,412.73), March 15, 2015 (\$1,621.47), July 13, 2015 (\$502.03), and November 13, 2015 (\$8,350). Rutherford failed to provide MREC with any of the requested records related to these debits from the Fortune account, and there is no admissible evidence in the record related to those transactions.

Furthermore, as of September 21, 2015, Rutherford failed to remit a total of \$188,910.39 owed to DVM, VF, and JVM that Bohn requested in his August 18, 2015 e-mail to Rutherford. Because more than one month passed since Bohn requested the \$188,910.39, and there is no

¹⁴ MREC's complaint and written argument include 20 CSR 2250-8.220(8), which provides:

- (8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

However, Bohn stated at the hearing that he "printed these unsigned checks because I had access to the checks. . . But in trying to document what was owed, I printed these." Tr. 7. Therefore, we do not find cause to discipline Rutherford's license due to a violation of this regulation.

¹⁵ Count VI of MREC's complaint alleges that these actions by Rutherford also violated 20 CSR 2250-8.120(4), (16) and (19). However, there are no subsections (16) or (19) within that regulation. Count VI of the complaint also alleges that there is cause to discipline Rutherford's license under § 339.100.2(1) and (2), and that he violated §§ 339.730.1(4) and 339.105(1). Although § 339.730.1(4) was included in MREC's written argument, none of these causes for discipline or violations under § 339.100.2(1), (2) § 339.730.1(4) and § 339.105(1) were mentioned under Count VI of MREC's written argument. Therefore, we deem these statutes and regulations to be abandoned for Count VI.

evidence that Rutherford remitted those funds owed to DVM, VF, and JVM, Rutherford has failed within a reasonable time to account for and remit money coming into his possession and belonging to another, and therefore violated 20 CSR 2250-8.120. There is cause to discipline Rutherford's broker license for counts I and IV under § 339.100.2(3) and (15).

Count II

MREC argues that there is cause to discipline Rutherford's license under § 339.100.2(1) and (15) for violating § 339.105.1 and .3, and 20 CSR 2250-8.120(1), (4), (6) and (7).

On January 21, 2015, there was a \$124,000 deposit and a \$102,412.73 debit from the Optimus account. In a February 9, 2016 letter to Rutherford, MREC requested records to explain these transactions. In a February 16, 2016 letter to MREC, Rutherford asserted that the \$124,000 deposit was from "loan proceeds from an investor," and that "The funds were used to bring loan payments & property taxes current that had fallen behind due to unfulfilled loan commitments to the portfolio by Fortune Bank."¹⁶ In regards to the \$102,412.73 debit, Rutherford asserted in his letter that "The funds were debited from the escrow account and distributed among various Fortune Bank loans secured by properties under management."¹⁷

In written argument, Rutherford stated that "[t]here was no escrow account held by the respondent that would be obligated to the laws set forth by the MREC to manage such account in compliance with licensing laws."¹⁸ Not only did Rutherford fail to provide admissible evidence for any of his arguments, Rutherford did not provide MREC any of the records requested in MREC's February 9, 2016 letter in order to determine the adequacy of Optimus' account. As a result, we find that Rutherford violated § 339.105.1 and .3, and 20 CSR 2250-8.120(1), (4), (6) and (7).

¹⁶ Ex. 1 at 30.

¹⁷ *Id.*

¹⁸ Resp. Brief at 5.

There is cause to discipline Rutherford's broker license under § 339.100.2(1) and (15).

Count III

MREC argues that there is cause to discipline Rutherford's license under § 339.100.2(15) for violating 20 CSR 2250-8.220(1).¹⁹ Between January 1, 2015 and August 2, 2015, a total of 197 checks were returned for insufficient funds from Rutherford's escrow account. In written argument, Rutherford stated that "[t]here were instances of insufficient funds and investments and loans made by outside sources to cover such shortages."²⁰ Rutherford failed to ensure that the account balance for the owner's properties was sufficient to cover the disbursements from this account. Therefore, Rutherford violated 20 CSR 2250-8.220(1), and is subject to discipline under § 339.100.2(15).

Count IV

MREC also argues that Rutherford commingled funds on several occasions. In September and December 2015, Rutherford issued checks from the Triad account for expenses at properties that he managed. In addition, in July 2015, Rutherford booked expenses in the Triad account for properties that he managed. In written argument, Rutherford stated that "[r]espondent used his own personal funds from his Triad Bank account to cover payments on behalf of owners. This has been identified as commingling by the Petitioner[.]"

Therefore, Rutherford violated § 339.105.1 and is subject to discipline under § 339.100.2(15).

Count V

In September 2015, the account statements for KTL and FPI had final monthly balances that were negative. Furthermore, in December 2015, the account statements for ANM, JKS,

¹⁹ MREC also argues cause for discipline for count III under § 339.100.2(16) and (19). We discuss these subsections later in this decision.

²⁰ Resp. Brief at 2.

ARG, CNR, TLB, RLO, 527, Peanut, 6211, and JM also reflected final monthly balances that were negative. In written argument, Rutherford stated the following:

Due to the portfolio not yet being fully funded by the bank, *the expenses related to managing the Property Group*²¹ were over and above the revenue generated. This was anticipated and planned as the properties in portfolio required significant renovations and couldn't be leased until the properties were habitable.

There was indeed a pattern of negative balances.²²

Rutherford failed to appear at the hearing and did not offer any admissible evidence to the contrary. Therefore, we find that he violated 20 CSR 2250-8.220(1), and is subject to discipline under § 339.100.2(15).

Section 339.100.2(16)

In written argument, MREC alleges cause to discipline Rutherford's real estate license under §339.100.2(16) under counts I, III, and V for committing acts that would be grounds for MREC to refuse him a license under § 339.040.1(3).

Competence, when referring to occupation, is "the actual ability of a person to perform in that occupation." Section 1.020(9). In *Albanna v. State Bd. of Regis'n for the Healing Arts*,²³ the court described incompetency as a "state of being" amounting to an inability or unwillingness to function properly. The *Albanna* court said that the evaluation necessitates a broader-scale analysis, taking into account the licensee's capacities and successes. *Id.*

Such incidents may not show incompetence by themselves, and even repeated incidents might not demonstrate incompetence if they are so scattered that they do not show the general

²¹ Throughout Rutherford's written argument, Rutherford used the phrase "Property Group" to refer to the various properties that he managed.

²² Resp. Brief at 2, 6. (Italics added).

²³ 293 S.W.3d 423, 435 (Mo. banc 2009).

lack of skill or disposition that signify incompetence.²⁴ However, taken together, Rutherford's conduct in counts I, III, and V shows either a lack of, or lack of disposition to use, professional skills in handling other people's money and keeping records. Therefore, we conclude that such conduct is cause for discipline under § 339.100.2(16) because it shows a lack of competence to transact the business of a broker.

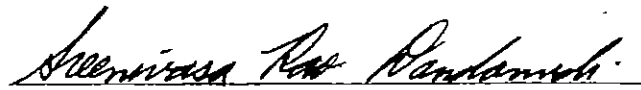
Subsection 339.100.2(19) – Other Conduct

The adjective “other” means “not the same; DIFFERENT, any [other] man would have done better[.]”²⁵ As such, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. The record shows no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

Summary

There is cause to discipline Rutherford's real estate license under § 339.100.2(1), (2), (3), (15), and (16).

SO ORDERED on June 19, 2018.


SREENIVASA RAO DANDAMUDI
Commissioner

²⁴ *Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 538-39 (Mo. App., E.D. 1988).

²⁵ Webster's Third International Dictionary, 1598 (unabr. 1986).

FILED

August 3, 2017

ADMINISTRATIVE HEARING
COMMISSION

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

MISSOURI REAL ESTATE COMMISSION
3605 Missouri Blvd.
P.O. Box 1339
Jefferson City, Missouri 65102-1339,

Petitioner,

v.

No. _____

JOEL W. RUTHERFORD
254 Renaldo Drive
Chesterfield, Missouri 63017

and

THE RUTHERFORD GROUP, LLC
Serve: Joel Rutherford
3118-A Morganford Rd
St. Louis, MO 63116

Respondents.

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the undersigned counsel, and for its cause of action against Respondents Joel W. Rutherford and The Rutherford Group, LLC (collectively "Respondents"), states:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo,¹ for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.

2. Joel W. Rutherford ("Broker" or "Rutherford") is licensed as an individual real estate broker, license no. 2001009430. At all times relevant herein, Rutherford's real estate broker license was current and active.

3. The Rutherford Group, LLC, is a Missouri limited liability company, license no. 2012029612.

4. At all relevant times herein, The Rutherford Group, LLC's license was current and active.

5. At all relevant times, Rutherford was the designated broker of The Rutherford Group, LLC, and as such, bears responsibility for his own conduct as well as that of The Rutherford Group, LLC.

6. Rutherford's real estate license is culpable for the conduct and violations revealed by the MREC's audit of The Rutherford Group, LLC.

7. References to Rutherford are also references to The Rutherford Group, LLC.

¹All statutory citations are to the Revised Statutes of Missouri 2000, as amended, unless otherwise noted.

8. References to The Rutherford Group, LLC are also references to Rutherford.

9. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.100.2, RSMo.

10. Section 339.100.2, RSMo, provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

...

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

11. Section 339.105, RSMo Supp. 2013, provides:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum

not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

12. Section 339.710(12), RSMo, defines the term "designated broker"

and provides:

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability company, professional corporation or corporation. Every real estate broker partnership, limited partnership, association, limited liability company, professional corporation or corporation shall appoint a designated broker;

13. Section 339.730.1(4) provides:

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations: (4) To account in a timely manner for all money and property received;

14. State Regulation 20 CSR 2250-8.120 provides:

(1) All money received by a licensee as set out in section 339.100.2(1), RSMo shall be deposited in the escrow or trust account maintained by the broker no later than ten (10) banking days following the last date on which the signatures or initials, or both, of all

the parties to the contract are obtained, unless otherwise provided in the contract. Earnest money received prior to acceptance of a written contract may be deposited into the escrow account by the broker with the written authorization of the party(ies) providing the funds.

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds, and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. . .;

15. State Regulation 20 CSR 2250-8.220 provides:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

(8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

16. On or about January 11-14, 21, 28, February 4, 17-18, 23 and 25 of 2016, an MREC auditor conducted an audit and examination (numbered DT-1016441) of Rutherford's and Rutherford Group's business records and escrow accounts ("Audit") for the period of January 1, 2015 to January 11, 2016 ("Audit Period").

17. During the Audit, the examiner reviewed Rutherford Group's property management account held at Fortune Bank, account no. XXXX9175, which will be referred to hereinafter as the Property Management Escrow Account.

Count I
Failure to Account for Funds of Others

18. The MREC realleges and incorporates by reference paragraphs 1 through 17 as though fully set forth herein.

19. During the Audit Period, Rutherford failed to account for funds of others on multiple instances, specifically by failing to book debits to any owner and failing to provide documentation containing information as to the purpose of the debits regarding the Property Management Escrow Account, in violation of 339.100.2(3), RSMo, as follows:

- a. A \$502.03 bank debit on July 13, 2015, which was not booked to any owner, and for which no document

containing any information as to the debit's purpose was provided by Rutherford;

- b. A \$8,350.00 bank debit on November 13, 2015, which was not booked to any owner, and for which no document containing any information as to the debit's purpose was provided by Rutherford;
- c. A \$102,412.73 bank debit on January 21, 2015, which was not booked to any owner, and for which no document containing any information as to the debit's purpose was provided by Rutherford;
- d. A \$1,621.47 bank debit on March 15, 2015, which was not booked to any owner, and for which no document containing any information as to the debit's purpose was provided by Rutherford.

20. Based on the conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to § 339.100.2(3) and (15), RSMo.

Count II
Improper and/or Untrustworthy Business Dealings and Failure to
Maintain Funds of the Owner

21. The MREC realleges and incorporates by reference paragraphs 1 through 20 as though fully set forth herein.

22. During the Audit Period, Rutherford used funds of one owner to pay expenses for another unrelated owner.

23. After one owner made an owner contribution, Fortune Bank debited the majority of the contribution to pay expenses for multiple other owners.

24. Specifically, the January 30, 2015 bank statement of the Property Management Escrow Account shows a deposit reflecting an owner contribution by owner Optimus Group in the amount of \$124,000.00, and a debit in the amount of \$102,412.73.

25. The debit in the amount of \$102,412.73, was used to pay miscellaneous owners' loan payments, but failed to provide broker documents authorizing the transfer of funds between owners or indicating which owners were credited the \$102,412.73.

26. Using funds from one owner to cover the expenses of another owner, while failing to maintain documents authorizing or identifying the transfer of funds between owners, constitutes improper and/or untrustworthy business dealings.

27. Using funds from one owner to cover the expenses of another owner, while failing to maintain documents authorizing or identifying the transfer of funds between owners, constitutes failure to maintain funds of the owner.

28. Based on Rutherford's conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to § 339.100.2(1), (15), and (19), RSMo, §339.105.1 and §339.105.3, and 20 CSR 2250-8.120(1),(4),(6) and (7).

Count III
Insufficient Fund Checks

29. The MREC realleges and incorporates by reference paragraphs 1 through 28 as though fully set forth herein.

30. During the Audit Period, Rutherford wrote several insufficient fund checks on the Property Management Escrow Account, which were written and cleared, before being posted back to the Property Management Escrow Account as return item credits due to the negative balance in the account in violation of § 339.100.2(15) and (19) and 20 CSR 2250-8.220(1) as follows:

- a. The January 30, 2015 Bank Statement shows a return item credit in the amount of \$4,856.11 on January 14, 2015.

- b. The January 30, 2015 Bank Statement shows a return item credit in the amount of \$4,856.11 on January 16, 2015.
- c. The January 30, 2015 Bank Statement shows return item credits in the amounts of \$1,360.57, \$1,736.22, \$2,500.00, \$8,555.15, \$12,081.56, \$478.20, \$30.00, and \$276.50 on January 28, 2015.
- d. The February 27, 2015 Bank Statement shows return item credits in the amounts of \$5,800.00 and \$3,000.00 on January 30, 2015.
- e. The February 27, 2015 Bank Statement shows a return item credit in the amount of \$2,500.00 on February 2, 2015.
- f. The February 27, 2015 Bank Statement shows a return item credit in the amount of \$4,467.61 on February 12, 2015.
- g. The February 27, 2015 Bank Statement shows a return item credit in the amount of \$4,467.61 on February 17, 2015.

- h. The March 31, 2015 Bank Statement shows return item credits in the amounts of \$7,500.00 and \$4,619.95 on March 20, 2015.
- i. The April 30, 2015 Bank Statement shows return item credits in the amounts of \$6,086.73 and \$1,373.70 on March 20, 2015.
- j. The May 29, 2015 Bank Statement shows a return item credit in the amount of \$4,467.61 on May 12, 2015.
- k. The May 29, 2015 Bank Statement shows a return item credit in the amount of \$1,680.00 on May 26, 2015.
- l. The May 29, 2015 Bank Statement shows a return item credit in the amount of \$2,150.00 on May 27, 2015.
- m. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$2,150.00, \$1,000, \$600.00, \$600.00, \$1,400.00, \$628.55, and \$2,608.49.00 on June 1, 2015.

- n. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$1,555.00 and \$3,406.71 on June 3, 2015.
- o. The June 30, 2015 Bank Statement shows a return item credit in the amount of \$6,030.15 on June 15, 2015.
- p. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$1,650.44, \$1,318.19, \$1,507.61, \$36.42, \$36.42, \$42.15, \$52.81, \$52.81, \$56.47, \$56.47, \$60.13, \$89.37, \$96.69, \$524.18, \$34.59, \$34.59, \$52.69 and \$519.09 on June 16-17, 2015.
- q. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$573.95, \$597.48, \$30.00, \$869.48, \$31.00, \$36.42, \$65.86 and \$648.73, on June 18-19, 2015.
- r. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$408.90, \$1,657.00, \$34.59, \$34.59, \$36.42, \$36.42, \$42.15, \$52.69, \$52.81, \$52.81, \$56.47, \$56.47, \$60.13, \$89.37, \$96.69, \$184.97, \$519.09, and \$524.18 on June 22-23, 2015.

- s. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$250.00, \$298.10, \$924.05, \$260.41, \$425.00, \$2,298.38, \$2,500.58, \$184.97, \$573.95 and \$597.48 on June 24, 2015.
- t. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$3,555.00, \$43.74, \$408.90, \$648.73, \$36.42, \$36.42, \$37.99, \$43.30, \$52.69, \$52.81, \$54.64, \$61.61, \$91.80 on June 25-26, 2015.
- u. The June 30, 2015 Bank Statement shows return item credits in the amounts of \$34.35, \$2,298.38, \$2,500.58, \$36.42, \$38.25, \$45.81, \$60.13, \$65.86 and \$713.54 on June 29-30, 2015.
- v. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$2,000.00, \$600.00, \$165.00, \$1,400.00, \$775.00, \$600.00, \$500.00, \$6,039.03, \$5.74, \$22.13, \$22.13, \$24.95, \$24.95, \$27.77, \$43.74, \$35.00, \$425.00, \$860.00, \$2.95, \$34.35, \$36.42, \$36.42, \$37.99, \$43.30, \$52.69, \$52.81, \$54.64, \$61.61, \$91.80 and \$127.76 on July 1-2, 2015.

- w. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$2,000.00, \$165.00, \$1,400.00, \$600.00, \$500.00, \$1,925.00, \$541.85, \$6,864.03, \$526.31, \$1,500.00 and \$940.00 on July 6, 2015.
- x. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$1,400.00, \$775.00, \$600.00 and \$500.00 on July 9, 2015.
- y. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$211.02, \$461.75, \$1,502.75 and \$1,502.75 on July 10 and 13, 2015.
- z. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$7,752.57, \$1,500.00, \$900.96, \$1,400.00, \$775.00, \$1,500.00 and \$700.00 on July 14, 2015.
- aa. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$700.00, \$5,573.32, and \$600.00 on July 17, 2015.
- bb. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$541.85, \$3,063.04,

\$1,525.00, \$5,375.79, \$2,016.00 and \$600.00 on July 20 and 22, 2015.

cc. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$35.00, \$2,016.00, \$700.00, \$603.54, \$311.50 on July 27, 2015.

dd. The July 31, 2015 Bank Statement shows return item credits in the amounts of \$700.00, \$500.00, \$1,800.00, \$676.67, \$560.00, \$650.00, \$2,397.00, \$710.00, \$1,140.00, \$750.00 and \$102.48 on July 28, 2015.

31. Based on the conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to § 339.100.2(15) and (19), RSMo,

Count IV
Commingling Funds

32. The MREC realleges and incorporates by reference paragraphs 1 through 31 as though fully set forth herein.

33. During the Audit Period, Rutherford commingled owner funds in his personal account at Triad Bank on numerous instances, when Rutherford made payments on behalf of owners using his personal account, booked rents and expenses for owners through his personal account, booked property

management activity from his personal account, and made rent deposits and owner expense payments through his personal account, in violation of § 339.105.1, RSMo, as follows:

- a. Rutherford wrote a check on September 11, 2015 from his personal account at Triad Bank in the amount of \$1,000.00 for renovation expenses on behalf of an owner;
- b. Rutherford wrote a check on September 11, 2015 from his personal account at Triad Bank in the amount of \$900.00 for renovation expenses on behalf of an owner;
- c. Rutherford wrote a check on September 11, 2015 from his personal account at Triad Bank in the amount of \$800.00 for renovation expenses on behalf of an owner;
- d. Rutherford wrote a check on September 14, 2015 from his personal account at Triad Bank in the amount of \$800.00 for renovation expenses on behalf of an owner;
- e. Rutherford wrote a check on September 16, 2015 from his personal account at Triad Bank in the amount of \$600.00 for renovation expenses on behalf of an owner;

- f. Rutherford wrote a check on September 25, 2015 from his personal account at Triad Bank in the amount of \$500.00 for renovation expenses on behalf of an owner;
- g. Rutherford booked rents and expenses for owners through his personal account at Triad Bank for numerous transactions during July of 2015.
- h. Rutherford deposited \$500.00 from Antonio Samuel's rent deposit into his personal account at Triad Bank on December 15, 2015.
- i. Rutherford deposited \$1150.00 from Jessica D. Estes' rent deposit into his personal account at Triad Bank on December 16, 2015.
- j. Rutherford deposited \$75.00 from Asia Spencer's rent deposit into his personal account at Triad Bank on February 16, 2015.
- k. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 29, 2015 in the amount of \$385.00.

- l. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 22, 2015 in the amount of \$1000.00.
- m. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 21, 2015 in the amount of \$410.00.
- n. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 21, 2015 in the amount of \$738.50.
- o. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 21, 2015 in the amount of \$2,313.77.
- p. Rutherford deposited a check for rent into his personal account at Triad Bank on December 17, 2015 in the amount of \$1,225.00.
- q. Rutherford deposited a check for rent into his personal account at Triad Bank on December 16, 2015 in the amount of \$500.00.

- r. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 15, 2015 in the amount of \$473.21.
- s. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 15, 2015 in the amount of \$1,667.17.
- t. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 11, 2015 in the amount of \$473.21.
- u. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 14, 2015 in the amount of \$1,667.17.
- v. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 18, 2015 in the amount of \$2,313.77.
- w. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 18, 2015 in the amount of \$738.50.

- x. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 18, 2015 in the amount of \$309.48.
- y. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 18, 2015 in the amount of \$1,000.00.
- z. Rutherford issued a check for owner expense payments from his personal account at Triad Bank on December 24, 2015 in the amount of \$385.00.

34. Writing checks from Rutherford's personal account for owner expenses and depositing rent checks into Rutherford's personal account as set forth above constitutes commingling of funds in violation of § 339.105.1, RSMo and 20 CSR 2250-8.220(3).

35. Based on Rutherford's conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to § 339.100.2(1) and (15), RSMo.

Count V

Disbursing Funds from Escrow Account with Insufficient Balance

36. The MREC realleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

37. Rutherford disbursed funds from the Property Management Escrow Account when the owner's account was insufficient to cover the disbursement on at least 127 occasions during the Audit Period.

38. Disbursing funds from the Property Management Escrow Account when the owner's account did not have sufficient funds in the account to cover the disbursement is a violation of 20 CSR 2250-8.220(1).

39. Based on Rutherford's conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to § 339.100.2(15), RSMo.

Count VI

Failure to Remit and Maintain Money Belonging to Others (pre-Audit Period)

40. The MREC realleges and incorporates by reference paragraphs 1 through 39 as though fully set forth herein.

41. In or around 2012, Rutherford entered into a verbal agreement with Harrison Bohn, under which Rutherford would manage certain properties owned by Bohn and a group of investors led by Bohn, including DVM Holdings, LLC, Schprocker VF, LLC and JVM Holdings, LLC.

42. During the course of their business relationship, Bohn spent time working in Rutherford's office and was involved in property management activities relating to Rutherford's business.

43. While working at Rutherford's office, Bohn observed that funds were missing relating to properties owned by Bohn and his group of investors.

44. Without the permission or knowledge of Bohn, Rutherford invested funds belonging to Bohn and his group of investors in the Rutherford Group.

45. As of September 21, 2015, in connection with Rutherford's management of properties owned by DVM Holdings, LLC, Respondents owe DVM Holdings, LLC \$2,975.03 in owner distributions from the management and rent collection of properties owned by DVM Holdings, LLC, based on undelivered owner payments in August of 2015 in the amount of \$1,292.11 for the property located at 3716 Louisiana Ave., St. Louis, MO 63118, \$740.42 for the property located at 4312 Jessica Avenue, St. Louis, MO 63188, and \$942.50 for the property located at 4678 Louisiana Ave., St. Louis, MO 63111.

46. As of September 21, 2015, in connection with Rutherford's management of properties owned by Schprocket VF, LLC, Respondents owe Schprocket VF, LLC \$7,422.15 in owner distributions from the management and rent collection of properties owned by by Schprocket VF, LLC, based on undelivered owner payments in August of 2015 in the amount of \$805.50 for the property located at 3416 Miami St., St. Louis, MO 63118, \$669.60 for the

property located at 3822 Louisiana Ave., St. Louis, MO 63118, \$657.88 for the property located at 3853 Neosho St., St. Louis, MO 63115, \$695.15 for the property located at 3928 Pennsylvania, St. Louis, MO 63118, \$702.00 for the property located at 4356 Neosho St., St. Louis, MO 63116, \$1,496.86 for the property located at 4425 S. 38th St., St. Louis, MO 63116, \$754.96 for the property located at 4436 Ellenwood Ave, St. Louis, MO 63116, \$1,074.20 for the property located at 4626 Minnesota Ave., St. Louis, MO 63111, and \$566.00 for the property located at 6009 Michigan Avenue, St. Louis, MO 63111.

47. As of September 21, 2015, in connection with Rutherford's management of properties owned by JVM Holdings, LLC, Respondents owe JVM Holdings, LLC \$178,513.21 in owner distributions from the management and rent collection of properties owned by JVM Holdings, LLC, based on an August 4, 2015 ending cash balance of \$129,658.21 and unsigned owner distribution checks totaling \$48,855.00.

48. The property management relationship between Bohn and Rutherford ended in or around 2015.

49. Rutherford has failed to remit the missing funds set forth in paragraphs 45-47.

50. Based on Rutherford's conduct and violations alleged herein, cause exists to discipline Respondents' real estate licenses pursuant to § 339.100.2(1)(2)(3)(15)(violation of § 339.730.1(4), § 339.105(1) and 20 CSR 2250-8.120(4)), (16) and (19).

Count VII
(Section 339.040.1, RSMo)

51. The MREC realleges and incorporates by reference paragraphs 1 through 50 as though fully set forth herein.

52. Section 339.100.2(16), RSMo, provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

.....

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040.

53. Section 339.040, RSMo, provides, in pertinent part:

1. Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners

present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

54. The conduct of the Rutherford Group and Rutherford, individual and collectively, as alleged in each count of this Complaint, individually and collectively demonstrates that the Rutherford Group and Rutherford (1) lack good moral character; (2) do not bear a good reputation for honesty, integrity, and fair dealing; and (3) are not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo, providing cause to discipline the real estate licenses of the Rutherford Group and Rutherford pursuant to § 339.100.2(16), RSMo.

Count VIII
(§ 339.100.2(19))

55. The MREC realleges and incorporates by reference paragraphs 1 through 54 as though fully set forth herein.

56. Section 339.100.2(19), RSMo, provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

.....

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence.

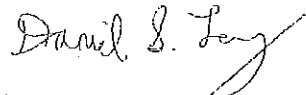
57. The conduct of the Rutherford Group and Rutherford, individually and collectively, as alleged in each count of this Complaint, individually and collectively, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, providing cause to discipline the real estate licenses of the Rutherford Group and Rutherford pursuant to § 339.100.2(19), RSMo.

WHEREFORE, Petitioner respectfully requests this Commission to conduct a hearing in this cause pursuant to Chapter 621, RSMo, and thereafter to issue its findings of fact and conclusions of law determining that Petitioner may take disciplinary action against the real estate licenses of Respondents for violations of Chapter 339, RSMo, and the regulations

promulgated thereunder, and for such other and further relief as this Commission deems just and proper.

Respectfully submitted,

JOSHUA HAWLEY
Attorney General

A handwritten signature in cursive script, appearing to read "Daniel S. Levy".

Daniel S. Levy
Assistant Attorney General
Missouri Bar No. 66039

P.O. Box 861
St. Louis, MO 63188
Telephone: (314) 340-7953
Facsimile: (314) 340-7891
Daniel.levy@ago.mo.gov

Attorneys for Petitioner